

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1571**

State of Minnesota,
Respondent,

vs.

Paul Edward Johnson,
Appellant.

**Filed October 9, 2023
Affirmed
Reyes, Judge**

Anoka County District Court
File No. 02-CR-20-1501

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Bradley R. Johnson, Anoka County Attorney, Robert I. Yount, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Tracy M. Smith, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that his conviction of possession of theft tools must be reversed
due to insufficient circumstantial evidence to prove the element of identity. We affirm.

FACTS

On January 11, 2020, officers from the Coon Rapids Police Department were dispatched to a car-wash company on a burglary report. A surveillance camera from the car wash captured the burglary on video which was admitted into evidence. The video showed a pick-up truck entering the car wash just after 5:00 a.m. The suspect exited the pick-up truck and wore a unique camouflage hooded sweatshirt with a Harley Davidson logo, boots with a distinct wear pattern, and a wallet with a chain attached to the person's pants on the right hip. However, the suspect's face was not visible because of the hood on the sweatshirt and a black bandana over their face. The suspect first washed the pick-up truck and then grabbed a prybar to break a lock off a coin receptacle. The suspect then grabbed a large hammer from the truck to try to break into the back office unsuccessfully. The suspect fled the scene in the pick-up truck. One officer later testified that the suspect was "approximately six feet tall, maybe even a little shorter, and pretty stocky."

Based on the surveillance footage, the officers ran the pick-up truck's front and back license plates, which did not match each other, through a database. They discovered that the back license plate was unregistered while the front plate was registered to appellant Paul Edward Johnson. As a result, officers went to appellant's registered address and observed the pick-up truck parked in the alley located behind the house. The officers knocked on the front door several times, but no one answered. The officers then "requested a tow truck to impound the vehicle so [they] could apply for a search warrant at a later date." Once the tow truck arrived, the officers went to the front of the house to let the tow-

truck driver know the location of the pick-up truck. When the tow truck and the officers arrived at the rear of the house, the officers saw someone driving the pick-up truck away.

The officers drove around attempting to locate the pick-up truck and eventually found it parked on the side of a residential street. Officers identified the driver of the pick-up truck as appellant's girlfriend. Officers had the pick-up truck towed and brought appellant's girlfriend back to appellant's residence. They knocked on appellant's door again, and this time appellant answered. One officer testified that appellant was "wearing the exact same hooded sweatshirt that the suspect of the burglary was wearing in the security camera video." The officer described the sweatshirt as a "very unique Harley Davidson camouflage sweater with a skull right on the front." The officers placed appellant under arrest and searched him. They also observed that appellant was "wearing a pair of boots" and removed a "trifold style wallet that was connected to [appellant's] pants by [a] chain" which looked like the wallet the suspect had in the surveillance video. Officers searched the truck but did not find a pry bar or hammer.

Respondent State of Minnesota charged appellant with (1) second-degree attempted burglary in violation of Minn. Stat. § 609.582, subd. 2(a)(4) (2018), and (2) possession of theft tools in violation of Minn. Stat. § 609.59 (2018). The state later amended the first charge to second-degree burglary in violation of Minn. Stat. § 609.582, subd. 2(a)(4). The case proceeded to a jury trial on April 5, 2022. The state presented several witnesses, including the manager of the car wash and three police officers involved in the investigation. Appellant testified in his own defense. When the state rested, appellant moved for acquittal on the second-degree burglary charge, which the district court granted.

The jury found appellant guilty of possession of theft tools. The district court sentenced appellant to a 21-month sentence, stayed for five years. This appeal follows.

DECISION

Appellant argues that the state failed to prove beyond a reasonable doubt the identity of appellant as the person who possessed the theft tools. We are not persuaded.

When evaluating the sufficiency of the evidence, “appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the [jury] disbelieved any evidence that conflicted with the verdict.” *Id.*

Because the state relied on circumstantial evidence to prove appellant’s identity, the circumstantial-evidence standard of review applies. “Circumstantial evidence review involves two steps.” *State v. Alarcon*, 932 N.W.2d 641, 648 (Minn. 2019). “First, we must identify the circumstances proved.” *Id.* (quotation omitted). For this step, appellate courts “defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state.” *Id.* (quotation omitted). Second, appellate courts “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *Id.* (quotation omitted). “[T]o sustain the conviction, the circumstances proved, when viewed as a whole, must be

consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

Under section 609.59, “a person who possesses any device with [the] intent to use the same to commit burglary or theft” is guilty of possession of a theft tool. *State v. Brown*, 689 N.W.2d 796, 800 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Dec. 13, 2005). “Identification is a question of fact, which the jury determines.” *State v. Yang*, 627 N.W.2d 666, 672 (Minn. App. 2001), *rev. denied* (Minn. Jul. 24, 2001).

Here, the state proved the following circumstances: (1) the suspect in the video, approximately six feet tall or less and pretty stocky, wore a unique Harley Davidson camouflage sweatshirt, brown boots with a distinct wear pattern, black gloves, and a wallet chain on the suspect’s right hip attached to a trifold wallet; (2) the pick-up truck’s front license plate was registered to appellant; (3) the officers found the pick-up truck behind appellant’s residence in an alley; (4) the officers knocked on the front door of appellant’s residence but no one answered; (5) the officers called a tow truck for the pick-up truck and went to the front of the residence when it arrived; (6) when the officers went to the front of the residence to meet the tow truck, appellant’s girlfriend drove the pick-up truck away to a residential area where it was later located with the engine still running; (7) the officers caught up to the pick-up truck, towed it, and brought appellant’s girlfriend back to appellant’s residence; (8) after returning to appellant’s residence with his girlfriend, the officers again knocked on appellant’s door and this time appellant answered; (9) officers observed appellant wearing a unique Harley Davidson camouflage sweatshirt, brown boots with a distinct wear pattern, and a wallet chain on his right hip connected to a trifold style

wallet; (10) appellant admitted that the pick-up truck in the surveillance video was his; (11) appellant admitted that the sweatshirt in the surveillance video was his; and (12) appellant testified that he gave no one else permission to drive his pick-up truck. These circumstances are consistent with the inference that appellant was the person who committed the crime of possession of burglary tools. Furthermore, the circumstances proved are inconsistent with any rational hypothesis except that of guilt.

Appellant appears to argue that the circumstances proved are consistent with a rational hypothesis that an alternative perpetrator stole his pick-up truck and committed the offense. We are not persuaded. At trial, one of the officers testified that initially appellant stated that his pick-up truck had been stolen by a person named C.P.¹ When the officer conducted a search of C.P., the officer stated that C.P.'s description "clearly didn't match the suspect in the video at all" because the height, the thickness of the shoulders, and the build of the suspect was different from that of C.P. The suspect in the video was six feet tall or less and very stocky. In contrast, C.P. is six foot two inches tall and weights 160 to 165 pounds. When the state asked appellant on cross-examination about C.P., appellant evaded the question several times and stated, "I'm not on [the] stand to snitch on somebody." An appellant may not rely on "mere conjecture" to establish a reasonably hypothesis of innocence; rather, "[they] must instead point to evidence in the record that is consistent with a rational theory other than guilt." *State v. Tscheu*, 758 N.W.2d 849, 858

¹ The record shows that appellant's offense occurred on January 11, but appellant did not report the pick-up truck stolen until January 14 when he was arrested and interrogated by the officer.

(Minn. 2008) (citations omitted). Based on the circumstances proved, there is no reasonable alternative hypotheses that an alternative perpetrator committed the crime of possession of theft tools.

Affirmed.